



State of Arizona Accounting Manual

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Section 52 **Contract Workers
and Related Matters**

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INTRODUCTION

This section of SAAM has been developed by units within the Arizona Department of Administration—including the Human Resources Division (HRD), the Risk Management Division (RMD), the State Procurement Office (SPO) and the General Accounting Office (GAO)—and representatives of the Office of the Attorney General (OAG).

While the principal concern of this policy statement is the relationship between the State and any temporary contract worker (as hereinafter defined), many of its considerations, concerns and requirements extend to any contractor engaged to provide services to the State for any purpose and for any length of time.

“ADOA Chief Human Resources Officer (CHRO)” means, as applicable, the ADOA employee assigned an agency to oversee an agency’s human resources function or an agency employee who functions as the ADOA Chief Human Resources Officer under the terms of a properly executed interagency services agreement between the ADOA and an agency.

“Chief Procurement Officer” means, as applicable, the ADOA employee assigned to an agency to oversee an agency’s procurement function or an agency employee who performs such a role.

“Agency management” means the agency head, deputy agency head or assistant agency head (not assistant to the agency head) responsible for issuing requisitions for and overseeing the activities (such as attendance) of temporary contract workers.

An “adverse determination” is a decision by a competent authority that an individual who has been treated as an “independent contractor” or “temporary contract worker” should have been treated as an employee. An adverse determination results in severe negative consequences for the entity determined to have been the worker’s employer.

As used herein, the term “temporary contract worker” defines an individual employed by a “temporary worker business” to provide services to a “client” on a fee basis. The services provided by the temporary worker business are “temporary worker services” and the arrangement between the temporary worker business and its client is referred to as a “temporary worker contract.” A contract worker or temporary contract worker is not a State employee and the arrangement between him and/or the temporary worker business that does employ him and the State should be temporary in nature. While a “temporary contract worker” is often referred to as a “temp,” some temporary worker contracts extend for periods longer than the word temporary would seem to imply;

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because of this, the term “temporary contract worker” can be applied to any individual who is not a State employee who provides services to the State that might and possibly should, if circumstances permitted, be performed by a State employee, whether he is known as a “temporary contract worker,” a “contract worker,” a “contractor,” or other title.

It is to be noted that different terms are used in different contexts by different organizations to identify the temporary contract worker, the temporary worker business, the and the client. The IRS, for example, uses the term “leased employee” rather than temporary contract worker and one sees the use of “leased staff” or other designations; a temporary worker business may be referred to as a “temporary staffing service,” “staff leasing company,” “staffing firm,” or “staffing business”; “customer” can be used rather than client.

Temporary worker services should, as the name implies, involve temporary engagements; problems involving the proper characterization of temporary contract workers are more likely to arise when these arrangements extend over significant periods of time or involve more than the completion of a specific project.

To better acquaint oneself with some of the issues that affect temporary contract workers, one should read SAAM Sections 9050, *Employee vs. Independent Contractor*, and 9051, *Independent Contractors: Considerations and Concerns*, which this section of SAAM expands upon and complements, but does not replace.

Temporary contract workers provide services--generally and preferably on a short-term basis--to the State through a temporary worker business; the temporary worker business establishes the terms and conditions of the employment of the temporary contract worker, including, but not limited to, pay and benefits, and deals with employment taxes and reporting to taxing authorities related to the temporary contract workers it supplies, pursuant to a contract between the temporary worker business and the State.

It may often be in the best interests of the State to outsource entire operations rather than to attempt to have services that are not temporary in nature, traditionally performed by State employees carried out, instead, by contract workers. Such an approach mitigates and possibly eliminates the risk of an adverse determination. Moreover, given competitive bidding and entity specialization, outsourcing entire operations may produce better and more economical results.

While it could be suggested that the fairly frequent rotation of personnel advocated by this section of SAAM introduces certain risks or costs related to the possible loss of an individual's experience with a process or familiarity with others in a team or department, it need be borne in mind that such risks and costs always exist—people do resign and retire, sometimes without very much notice. Conversely, not rotating temporary workers on a frequent basis increases potential risks and costs that could arise from litigation related to the employment status of the worker.

Nothing in this policy creates an employment relationship between the State and an individual employed by a temporary worker business.

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POLICIES

1. Agencies subject to the Arizona Procurement Code must use the appropriate ADOA State Procurement Office (SPO) statewide contract to purchase temporary worker services, unless a state contract waiver for off-contract purchase been approved in accordance with SPO Standard Procedure No. SP 040.
2. State employees involved in contracting for or otherwise engaging with temporary contract workers should familiarize themselves with the policy publications dealing with temporary contract workers or independent contractors issued by the GAO or other authorities.
3. Agencies may use the services of a temporary worker business to fill short-term assignments; appropriate use of temporary worker services may include, but not be limited to:
 - 3.1. Augmenting staff during a period of persistent vacancies caused by labor shortages.
 - 3.2. Covering a position during a State employee's leave of absence (e.g., FMLA leave, military leave, industrial leave, etc.).
 - 3.3. Performing work during peak workload periods, either anticipated (e.g., seasonal requirements) or unanticipated (e.g., a new program, expansion of an existing program, etc.).
 - 3.4. Assisting in the identification and recruitment of qualified candidates for potential employment consistent with any requirements of a contract between the temporary worker business and the State or its agencies.
4. Temporary contract workers are not State employees. The State disavows any employment relationship with any worker provided by a temporary worker business or under the provisions of a temporary worker contract.
5. Invoices to the State from temporary contract workers or temporary worker business that are calculated on hours of service provided:
 - 5.1. Must be based on actual hours of labor and/services provided.
 - 5.2. Must not include and payments relating to sick time, personal time off, holiday time, vacation time, overtime or any other calculation not related directly to actual hours or labor and/or services provided to the State.
6. Temporary contract workers must not:
 - 6.1. Be eligible for Employee Recognition Awards, spot awards, merit incentives, etc.

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- 6.2. Be allowed to act in the final capacity of approving disbursements or be granted access to State automated systems that involve the final approval of disbursements or transfers.
 - 6.3. Be directly reimbursed for expenses they may incur on behalf of the State. Requests for reimbursement should be made by temporary contract workers to their employer, the temporary worker business, and the reimbursement itself should be made by the temporary worker business to its employees, the temporary contract workers. The State is in privity of contract with the temporary worker business, not with the temporary contract workers themselves.
 - 6.4. Be provided training beyond that necessary to accomplish those tasks contemplated by the temporary worker contract between the State and the temporary worker business. For example, it might be appropriate to train a temporary contract worker to operate a particular accounting system, but not to teach the temporary contract worker courses in, for example, generally accepted accounting principles or management.
 - 6.5. Participate in certain events and meetings designed specifically for State employees (e.g., employee appreciation events, retirement seminars, etc.).
 - 6.6. Engage in any activity that would lead the temporary contract worker or any other individual or entity to conclude that the temporary contract worker is a State employee.
 - 6.7. Originate or approve on behalf of any State agency any requisitions to engage or contract with any temporary contract worker and/or temporary worker business.
 - 6.8. Approve on behalf of any State agency the time records or invoices related to any temporary contract worker and/or temporary worker business.
 7. Temporary contract workers should not:
 - 7.1. Manage or supervise State employees.
 - 7.1.1. While there may be circumstances under which it is in the best interest of the State to have a temporary contract worker provide some degree of oversight of State employees, these situations are rarities and should be of relatively brief duration and limited scope.
 - 7.1.2. The circumstances under which a temporary contract worker might provide oversight of State employees would be those in which a temporary contract worker temporarily fills the role of a manager or supervisor while an active search—including such evidence of intent as advertising the position, collecting resumes, conducting interviews and evaluations, etc.—to fill the position under consideration with a State employee is in progress.

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- 7.2. Perform work for the State for longer than three thousand (3,000) hours in any two- (2-) year period, unless an exception is approved in writing by the agency head or his deputy and the agency chief financial officer.
8. Every six (6) months, agency management must review the status of the engagements of all temporary contract workers who performed more than two thousand (2,000) hours work for the agency within the preceding eighteen (18) months. The purpose of this review is to determine whether it will be in the best interest of the State to continue an individual worker's engagement.
- 8.1. This review should involve the agency head or his deputy, the State employee or employees managing the temporary contract worker or workers, the agency chief financial officer, the agency's chief human resources officer and the agency's chief procurement officer.
- 8.1.1. The role of the chief human resources officer is to evaluate whether the services being provided by the subject temporary contract workers to determine whether other staffing arrangements—such as the establishment of positions for State employees or the rotation of individuals performing temporary worker services—might be more beneficial to the State.
- 8.1.2. The role of the chief procurement officer is to evaluate adherence to the terms of the contract by the temporary worker business and to determine what changes, if any, should be incorporated into future temporary worker contracts. The chief procurement officer might also weigh in on such matters as the rotation of individual temporary contractor workers under a temporary worker contract.
- 8.1.3. The role of the State employee or employees who manage the temporary contract worker or workers is to highlight operational considerations of continuing to engage a temporary contract worker or temporary contract workers when compared to other staffing alternatives.
- 8.1.4. The role of the chief financial officer is to consider and document the costs vs. benefits of various staffing proposals as well as the risks associated with a possible adverse determination relating to the use of temporary contract workers and to relate these matters and his own recommendations to the agency head and/or deputy agency head, the chief human resources officer, the agency's chief procurement officer and the State employee or employees managing the temporary contract worker or workers. The role of the chief financial officer also includes ensuring that the agency is in compliance with State policies.
- 8.1.5. The role of the agency head and/or deputy agency head is to make, for the agency, a decision as to whether a temporary contract worker or some group of contract workers should continue working for the State beyond three thousand (3,000) hours in a given two- (2-) year period. He may wish to consult with the

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Office of the Attorney General or in-house counsel with respect to compliance with Federal and State labor and tax laws.

- 8.2. From this review, any number of determinations or combinations thereof may be made--all of which should be appropriately documented and the relevant documentation be retained—including, but not necessarily limited to whether:
- 8.2.1. The engagements of some or all of the temporary contract workers should be extended beyond three thousand (3,000) hours. This may frequently be the best or worst option: best from the perspective on ongoing work or reduced retraining; worst from the perspective of exposure to possible adverse determinations regarding the employment status of the workers.
- 8.2.1.1. The extension of an individual temporary contract worker's or any independent contractor's engagement with the State beyond three thousand (3,000) hours contravenes State policy and requires that an exception to policy be authorized by the State Comptroller; instructions for requesting exceptions to policy are in SAAM 0015.
- 8.2.2. The State's interests could be best served—in either the short- or long-term—by having the services provided by temporary contract workers provided instead by State employees.
- 8.2.3. The contract or contracts involving temporary contract worker services should be continued, renewed or extended, but the individual workers provided by the temporary worker business should be changed out for other temporary contract workers. This option allows for continuity of the provision of temporary worker services, but reduces the risk of adverse determinations. This is particularly suitable when the amount of training required to be provided a temporary contract worker or the level of expertise required of a temporary contract worker is insignificant.
- 8.2.4. The temporary worker services provided under a contract should be continued through the completion of a given project and then terminated.
- 8.2.5. The contract governing the provision of temporary worker services should be in some way amended to better serve the needs of the State.
- 8.2.6. Outsourcing of entire processes rather than individual positions should be evaluated.
- 8.2.7. To the extent allowed by the temporary worker contract, converting temporary contract workers to State employees.
- 8.3. The written documentation of the evaluation should include a short-and long-term cost-benefit analysis of engaging the services temporary contract workers vs.

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outsourcing an entire process vs. having the services performed by State employees.

8.3.1. This documentation should be retained for five (5) years and be made available for audit and review by the GAO, HRD, SPO and other governmental parties with a legitimate interest.

8.3.2. The evaluation should contain, using the criteria established in SAAM 9050 and 9051, an analysis of the estimated likelihood of an adverse determination with respect to the employment status of the temporary contract worker or workers under consideration.

8.3.2.1. One of the factors to be considered in the case an adverse determination is estimated to be likely is the effect an adverse determination may have on other agencies of the State of Arizona. It is doubtful that if an adverse determination is made with respect to a given agency or program that the audit or investigation would not be extended to other agencies or programs.

8.3.2.2. If an adverse determination is estimated to be likely, the continuation of the problematic temporary contract worker services should be terminated as soon as practicable.

8.3.2.3. Agency management should consider involving the GAO in its effort to estimate the likelihood of an adverse determination.

8.4. While the required reviews of length of a contract worker's tenure are discussed above, more frequent evaluation is encouraged; when practicable, rotation of individual contract workers every six (6) months is recommended.

8.4.1. Rotation as discussed herein means that the duties assigned to a temporary contract worker should be changed. This can be accomplished by:

8.4.1.1. Changing the temporary contract worker's duties with an agency. Any changes to a temporary contract worker's duties should be communicated in writing to the applicable temporary worker business and the agency's chief procurement officer. Agency management and the agency's chief procurement officer should confer to determine whether a new purchase order and billing rate is warranted. Any changes should be confirmed with the temporary worker business in writing.

8.4.1.2. Moving the temporary contract worker to another State agency.

8.4.1.3. Interrupting for a significant period—minimally several weeks—the temporary contract worker's engagement with the State.

8.4.1.4. Permanently severing the temporary contract worker's relationship with the State.

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- 8.4.2. This view of rotation places the emphasis on temporary worker services on the task to be performed, rather than on the individual to perform the task.
- 8.5. When a temporary contract worker is assigned to perform work that is substantially equal to that which is or would be provided by a State employee, whether the contract billing rate for the temporary contract worker is appropriate is a matter that compels management attention; legal advice on the Equal Pay Act should be sought if circumstances warrant.
9. Whatever determination may be made with respect to workers—engaged as temporary contract workers or hired as employees of the State—appropriate funding must be secured per agency protocol.
10. When engaging the services of temporary contract workers, independent contractors, temporary contract worker companies, agency management is to consult with:
- 10.1. The agency's chief human resources officer to evaluate the need for temporary contract workers.
- 10.2. The agency's chief procurement officer, if it is decided there is a need for temporary contract workers, to determine the appropriate temporary worker business from which to engage temporary contract workers and to ensure that an appropriate purchase requisition is issued.
11. Agency management must ensure that appropriate pre-placement screenings are conducted by the temporary worker business in accordance with the contract to fill position-specific requirements.
12. Agency management must ensure that internal policies, procedures and practices are in place to address appropriately limited access and use of the following by temporary contract workers:
- 12.1. Facilities, keys to facilities, and badge access (a badge issued to a temporary contract worker shall identify the temporary contract worker as a "contractor").
- 12.2. Equipment, as required to allow the temporary contract worker to fulfill the terms of the contract with the temporary worker business.
- 12.3. Computer and software systems necessary to fulfill the terms of the temporary worker contract.
- 12.4. Cash and/or checks and/or warrant stock.
- 12.5. Confidential information held by the agency, including, as necessary, personally identifiable information.

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12.6. Public records.

13. At times appropriate to the circumstances, agency management must:

13.1. Coordinate and validate the work performed and the hours worked by temporary contract workers and ensure that such work falls strictly within the terms of the contract with the temporary worker business.

13.2. Review and approve temporary worker business invoices to the State prior to having the payment processed. This review should include verifying the agreed upon rate, the number of hours worked, and any claim for reimbursement of expenses incurred by temporary contract workers on behalf of the State of Arizona.

13.3. Monitor, as circumstances and evaluations may dictate, the termination of individual temporary contract workers or a temporary worker contract as a whole.

13.4. Identify any temporary contract workers or independent contractors who are Arizona State Retirement System (ASRS) retirees and ensure compliance with the requirements related to the ASRS Alternative Contribute Rate (ACR) contributions.

13.4.1. ASRS retirees can be identified using the ASRS online tool, which is to be found at <https://www.azasrs.gov>.

13.4.2. Additional information about the ACR can be found in SAAM 5545.

13.4.3. The agency's accounting and/or accounts payable unit is to be notified if any ACR contributions may become due with respect to temporary contract workers or independent contractors.

13.4.3.1. If the ACR applies to any temporary contract worker, calculate the amount of the ACR due and report it to the GAO using the [GAO-ACR ASRS Alternate Contribution Rate \(ACR\) Reporting Template](#) and to remit said ACR due to the GAO on a timely basis.

14. Agency management is responsible for ensuring to the extent practicable that any temporary worker business with which it does business:

14.1. Adheres in all respects to the State Procurement Code and the temporary worker business' contract.

14.2. In accordance with the relevant temporary worker contract:

14.2.1. Sources candidates, conducts interviews, reference checks and required background checks prior to the beginning date of the engagement.

14.2.2. If applicable to the engagement, conducts:

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14.2.2.1.Criminal records checks.

14.2.2.2.Drug and/or alcohol testing.

14.3. Generates invoices to the agency based upon reported and approved hours and/or reimbursable expenses incurred by temporary contract workers on behalf of the State.

14.4. Pays its employees, the temporary contract workers, for agreed upon duties and hours worked and reimburses them for expenses they incurred on behalf of the State.

14.5. Withholds, reports and remits all employment taxes that become due with respect to the temporary contract workers providing temporary worker services to the State.